

Nuclear Regulatory Commission

§ 9.103

Subpart C—Government in the Sunshine Act Regulations

SOURCE: 42 FR 12877, Mar. 7, 1977, unless otherwise noted.

§ 9.100 Scope of subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by subpart A, except that the exemptions set forth in § 9.104(a) shall govern in the case of any request made pursuant to § 9.23 to copy or inspect the transcripts, recordings, or minutes described in § 9.108. Access to records considered at NRC meetings shall continue to be governed by subpart A of this part.

[52 FR 49362, Dec. 31, 1987]

§ 9.101 Definitions.

As used in this subpart:

(a) *Commission* means the collegial body of five Commissioners or a quorum thereof as provided by section 201 of the Energy Reorganization Act of 1974, or any subdivision of that collegial body authorized to act on its behalf, and shall not mean any body not composed of members of that collegial body.

(b) *Commissioner* means an individual who is a member of the Commission.

(c) *Meeting* means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105, 9.106, or 9.108(c) do not constitute “meetings” within this definition.

(d) *Closed meeting* means a meeting of the Commission closed to public observation as provided by § 9.104.

(e) *Open meeting* means a meeting of the Commission open to public observation pursuant to this subpart.

(f) *Secretary* means the Secretary to the Commission.

(g) *General Counsel* means the General Counsel of the commission as provided by section 25(b) of the Atomic Energy Act of 1954 and section 201(f) of the Energy Reorganization Act of 1974, and, until such time as the offices of that officer are in the same location as those of the Commission, any member of his office specially designated in writing by him pursuant to this subsection to carry out his responsibilities under this subpart.

[42 FR 12877, Mar. 7, 1977, as amended at 50 FR 20891, May 21, 1985]

§ 9.102 General requirement.

Commissioners shall not jointly conduct or dispose of Commission business in Commission meetings other than in accordance with this subpart. Except as provided in § 9.104, every portion of every meeting of the Commission shall be open to public observation.

§ 9.103 General provisions.

The Secretary shall ensure that all open Commission meetings are held in a location such that there is reasonable space and adequate visibility and acoustics, for public observation. No additional right to participate in Commission meetings is granted to any person by this subpart. An open meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinion made by Commissioners or NRC employees at open meetings are not intended to represent final determinations or beliefs. Such statements may not be pleaded, cited, or relied upon before the Commission or in any proceeding under part 2 of these regulations (10 CFR part 2) except as the Commission may direct. Members of the public attending open Commission meetings may use small electronic sound recorders to record

the meeting, but the use of other electronic recording equipment and cameras requires the advance written approval of the Secretary.

[42 FR 12877, Mar. 7, 1977, as amended at 43 FR 13055, Mar. 29, 1978; 43 FR 37421, Aug. 23, 1978]

§9.104 Closed meetings.

(a) Except where the Commission finds that the public interest requires otherwise, Commission meetings shall be closed, and the requirements of §§9.105 and 9.107 shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Commission determines in accordance with the procedures of §9.105 that opening such meetings or portions thereof or disclosing such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including such information as defined in §2.790(d) of this title;

(5) Involve accusing any person of a crime, imposing a civil penalty on any person pursuant to 42 U.S.C. 2282 or 42 U.S.C. 5846, or any revocation of any license pursuant to 42 U.S.C. sec. 2236, or formally censuring any person;

(6) Disclose information of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory reports compiled for law enforcement purposes,

including specifically enforcement of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5801 *et seq.*, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) [Reserved]

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding or an action or proceeding before a state or federal administrative agency, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal agency adjudication pursuant to 5 U.S.C. 554 or otherwise involving a determination on the record after an opportunity for a hearing pursuant to part 2 or similar provisions.

(b) Examples of situations in which Commission action may be deemed to be significantly frustrated are: (1) If opening any Commission meeting or